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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES J. JACOBUS

Appeal 2009-000997
Application 09/785,385
Technology Center 2400

Decided:¹ July 16, 2009

Before JOHN A. JEFFERY, ST. JOHN COURTENAY III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Data (electronic delivery).

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-23. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing on this appeal was conducted on July 9, 2009.

We REVERSE.

THE INVENTION

Appellant's invention relates generally to network computing. More particularly, Appellant's invention relates to "a distributed environment that supports massive groupware streaming and pier-to-pier [sic] packetized communications." (Spec. 1).

Claim 1 is illustrative:

A distributed network computing environment, comprising:

a plurality of clients communicating within a multicast cloud distributed network using content specific data within messages to implement data routing and message culling in a groupware application; and

one or more network routing modules or router-embedded applets operative, in addition to normal packet-routing, to permit or inhibit the distribution of a particular message based upon the content of the message.

PRIOR ART

The Examiner relies upon the following references as evidence in support of the obviousness rejections:

| | | |
|-----------|--------------|---------------|
| Waters | US 5,841,980 | Nov. 24, 1998 |
| Lambright | US 6,015,348 | Jan. 18, 2000 |
| DeSimone | US 6,138,144 | Oct. 24, 2000 |

THE REJECTIONS

1. The Examiner rejected claims 1, 3-9, 11, and 14-23 under 35 U.S.C. § 103(a) as being unpatentable over the combination of DeSimone and Waters.
2. The Examiner rejected claims 2, 10, 12, and 13 under 35 U.S.C. § 103(a) as being unpatentable over the combination of DeSimone and Waters, and Lambright.

RELATED APPEALS

The following prior BPAI Decision on Appeal is noted with respect to this appeal:

Ex parte Jacobus, Appeal No. 2006-2763, decided on January 31, 2007.

APPELLANT'S CONTENTIONS

Appellant contends that the claim term “content” should be interpreted in accordance with the ordinary and customary meaning of the term. (App. Br. 3). Appellant further contends that neither DeSimone nor Waters teaches or suggests content which is data within the message where the distribution of a particular message is permitted or inhibited based upon

the content of the message, as claimed. (*Id.*) In particular, Appellant contends that the portions of DeSimone relied on by the Examiner show that it is the client and not data within messages that dictates what the client wants. (App. Br. 4). Appellant asserts that “*this is the way DeSimone operates – the client decides how to interact with the conference, not the content of messages.*” (*Id.*, emphasis in original).

EXAMINER’S FINDINGS

The Examiner states that Appellant’s amendment of the claims (i.e., the amendment of the claims previously before the Board) “simply makes clear what was already implied in the previous iteration of the claims” and “does not substantively change the interpretation of the claims and therefore the reasoning applied in the Board’s decision should apply with full force to Applicant’s current claims.” (Ans. 12; *see also Ex parte Jacobus*, Appeal No. 2006-2763, decided on January 31, 2007).

In particular, the Examiner acknowledges that in DeSimone “the routers and servers within the network route the packets based on the client’s choice.” (Ans. 12, ¶3). The Examiner proffers that it would have been obvious to an artisan that “the client’s choice of media type simply informs routers and servers that comprise the network which packets to route to the client.” (*Id.*) The Examiner maintains that the limitations argued by Appellant are taught or suggested by the cited combination of references, which the Examiner further maintains have been properly combined (Ans. 11-14).

ISSUE

Based upon our review of the administrative record, we have determined that the following issue is dispositive in this appeal:

1. Has Appellant shown the Examiner erred in finding that the combination of DeSimone and Waters teaches or suggests content-based routing in addition to normal packet routing (i.e., “one or more network routing modules or router-embedded applets operative, in addition to normal packet-routing, to permit or inhibit the distribution of a particular message based upon the content of the message,” as claimed)? (See independent claims 1 and 11).

PRINCIPLES OF LAW

“What a reference teaches is a question of fact.” *In re Baird*, 16 F.3d 380, 382 (Fed. Cir. 1994); *In re Beattie*, 974 F.2d 1309, 1311 (Fed. Cir. 1992).

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). Therefore, we look to Appellant’s Briefs to show error in the Examiner’s proffered prima facie case.

FINDINGS OF FACT

In our analysis *infra*, we rely on the following findings of fact (FF) that are supported by a preponderance of the evidence:

THE DESIMONE REFERENCE

1. DeSimone teaches:

Directory Server 106 functions to maintain a list of multicast IP addresses and ports available for use for a plurality of different and possibly concurrent conferences, to assign a subset of those addresses and ports to a particular conference when a conference is initiated, and to assign from that subset a unique multicast IP address and port number to each media type of each client as that client makes a request to become a member of that conference.

(Col. 5, ll. 5-12).

2. DeSimone teaches:

Upon receiving the set of sockets assigned to it for the conference, the client may decide how it wants to interact in the conference. Specifically, for each media type the client may only want to only receive, or to both receive and transmit, or to just transmit. Further, the client may choose to receive a particular media type from only select other clients on the conference. When a conference is established and a client joins an established conference, therefore, it receives a list of sockets used for transmitting by the other clients associated with the conference.

(Col. 5, ll. 24-33).

3. DeSimone teaches:

At any time during the conference, it may then receive packets from the other clients in the conference on the sockets assigned for transmission to those other clients, *or it may choose not to receive packets of any or all media types from other clients by either not adding the*

other client's socket(s) to its Multicast Receive Address List (MRAL), or by deleting the other client's socket from its MRAL if it was previously receiving transmissions from the other client. The client then sets its local interface to receive only those packets whose multicast IP addresses/port numbers match the ones in its MRAL.

(Col. 5, ll. 33-43).

4. DeSimone teaches:

[A]s illustrated in FIG. 1, client terminals 101-1 and 101-2 are members of common IP sub-network 110, clients terminals 101-3 and 101-4 are member of IP sub-network 111, and client terminal 101-5 is a member of IP sub-network 112. IP sub-networks 110, 111 and 112 are interconnected through multicast capable IP routers 113 and 114. A Directory Server (DS) 106, which need not operate in a multicast fashion, is connected to the IP network through router 107, which need not be multicast capable.

(Col. 4, ll. 55-64).

ANALYSIS

We decide the question of whether Appellant has shown the Examiner erred in finding that the combination of DeSimone and Waters teaches or suggests content-based routing *in addition to* normal packet routing (i.e., “one or more network routing modules or router-embedded applets operative, *in addition to normal packet-routing*, to permit or inhibit the distribution of a particular message *based upon the content of the message*,” as claimed). (See independent claims 1 and 11, emphasis added).

We begin our analysis by noting that the plain language of each independent claim on appeal requires: (1) one or more *network routing modules*, or (2) *router-embedded applets* that are operative to permit or inhibit the distribution of a particular message based upon the content of the message. In particular, we focus our attention on the further requirement of claims 1 and 11 that the one or more *network routing modules* or *router-embedded applets* are operative to perform the aforementioned content-based routing function in addition to normal packet-routing.

The Examiner has acknowledged DeSimone teaches “the routers and servers within the network route the packets based on the client’s choice.” (Ans. 12, ¶3). The Appellant agrees. (App. Br. 4). Nevertheless, the Examiner proffers that it would have been obvious to an artisan that “the client’s choice of media type simply informs routers and servers that comprise the network which packets to route to the client.” (Ans. 12, ¶3). However, we find this rationale by the Examiner at best merely suggests the *normal packet-routing* limitation of each independent claim on appeal, e.g., where a packet is routed according to its destination address.

Based upon our review of the DeSimone reference, we find DeSimone teaches a plurality of client terminals 101 as shown in Figure 1. (FF 4). DeSimone also teaches multicast-capable IP routers 113 and 114. (FF 4). Based upon our review of the evidence, we find DeSimone is silent regarding any express teaching of *network router-embedded applets*.

We find one or more *network routing modules* inherently reside on multicast-capable IP routers 113 and 114 (FF 4). DeSimone also discloses that “[a] Directory Server (DS) 106, which need not operate in a multicast

fashion, is connected to the IP network through router 107, which need not be multicast capable.” (FF 4). We find DeSimone is silent regarding any specific teaching or suggestion that any of the aforementioned routers (inherently containing *network routing modules*) are *operative to permit or inhibit* the distribution of a particular message based upon the content of the message, as claimed. We find the aforementioned routers are merely operative to perform *normal packet routing*, as previously discussed.

However, we find Directory Server 106 also necessarily includes one or more *network routing modules*. We find Directory Server 106 provides a routing table (i.e., list of multicast IP addresses and ports available for use) for a plurality of different and possibly concurrent conferences. (FF 1). Directory Server 106 assigns a subset of the aforementioned multicast IP addresses and ports to a particular conference when a conference is initiated. (FF 1). In particular, we acknowledge that when a client makes a request to become a member of a conference, Directory Server 106 then *assigns (from the aforementioned subset of available multicast IP addresses and ports) a unique* multicast IP address and port number to each media type (e.g., audio or video) of each client making a request. (FF 1).

However, we agree with both the Appellant and the Examiner that DeSimone teaches it is the client’s request that *controls* whether the distribution of a particular message is permitted or inhibited based upon the *media type* of the message. (See FF 2: “for each media type the client may only want to only receive, or to both receive and transmit, or to just transmit. Further, the client may choose to receive a particular media type from only select other clients on the conference.”). To the extent that Directory Server

106 may *indirectly* perform the assignment of available multicast IP addresses and ports *based upon* the client's choice to receive a particular media type (FF 2), we note that Appellant has strenuously argued in the Briefs that "*content*" as claimed is *not media type* ² (App. Br. 3, ¶¶ 2-3; *see also* Reply Br. 1-2).

Under the doctrine of file wrapper or prosecution history estoppel, we hold Appellant to this more narrow construction of the claimed "*content*" where "*media type*" has been disclaimed by Appellant's arguments as being a form of content used to determine routing. Consistent with this construction, we read the instant claims as requiring *specific data content in a message* to trigger content-based routing. According to Appellant's unequivocal interpretation, the mere *type* of content (e.g., audio or video) would be insufficient to trigger the claimed content-based routing. (App. Br. 3, ¶¶ 2-3; *see also* Reply Br. 1-2). *See Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d 448, 452 (Fed. Cir.1985) (ruling that "the prosecution history (or file wrapper) limits the interpretation of claims so as to exclude any interpretation that may have been disclaimed or disavowed during prosecution in order to obtain claim allowance"). "As a basic principle of claim interpretation, prosecution disclaimer promotes the public notice function of the intrinsic evidence and protects the public's reliance on definitive statements made during prosecution." *Omega Engineering, Inc., v. Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003) (citing *Digital Biometrics, Inc. v. Identix, Inc.*, 149 F.3d 1335, 1347 (Fed. Cir. 1998)). "[W]here the patentee has unequivocally disavowed a certain meaning to

² DeSimone describes "media-type" as audio or video. (Col. 2, l. 37).

obtain his patent, the doctrine of prosecution disclaimer attaches and narrows the ordinary meaning of the claim congruent with the scope of the surrender.” *Omega*, 334 F.3d at 1324.

Moreover, our review of the record reveals that the Examiner has read the claimed “lobby manager” (claim 4) on DeSimone’s Directory Server 106. (*See* Ans. 5 and 13). Therefore, we find the Examiner’s position is unconvincing because: (1) the Examiner has admitted that DeSimone teaches that “the routers and servers within the network route the packets based on the client’s choice” (Ans. 12, ¶3.) and, (2) DeSimone’s Directory Server 106 cannot reasonably correspond to both the claimed “one or more network routing modules” of claims 1 and 11, and the claimed “lobby manager” as recited in claim 11 and claim 4 (that depends from claim 1).

We do not find, nor has the Examiner established, that Waters or Lambright overcomes the deficiencies of DeSimone, as discussed *supra*. Accordingly, after considering the totality of the record before us, we find the weight of the evidence supports the Appellant’s position.

Because Appellant has successfully demonstrated that the Examiner has erred, we reverse the Examiner’s rejection of independent claims 1 and 11 under 35 U.S.C. § 103(a) as being unpatentable over the combination of DeSimone and Waters. Because we have reversed the Examiner’s obviousness rejection of each independent claim on appeal, we also reverse the obviousness rejections of the dependent claims on appeal.

CONCLUSION

Based on the findings of facts and analysis above, Appellant has established that the Examiner erred in finding that the combination of DeSimone and Waters teaches or suggests content-based routing in addition to normal packet routing (i.e., “one or more network routing modules or router-embedded applets operative, in addition to normal packet-routing, to permit or inhibit the distribution of a particular message based upon the content of the message,” as claimed). (See independent claims 1 and 11).

DECISION

We reverse the Examiner’s decision rejecting claims 1-23 under 35 U.S.C. § 103(a).

REVERSED

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